

# EXHIBIT C

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

File No. EB-15-MD-006

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workloads, and goal tracking. As Resource Analyst, I reported directly to the District Manager in one of Dominion's regional offices.

3. In 1997, I accepted the position of Joint Use Administrator, for the Central Region of Dominion's service area. I was promoted to my current position of Joint Use Administrator III in 2015. The Joint Use Administrator (JUA) position at Dominion is comprised of three-tiers, and encompasses the task of developing all details of the company's Joint Use criteria, and the manner in which those criteria are applied to third parties that maintain attachments on Dominion's poles. In my tenure as JUA, I participated directly in agreement negotiations with many attaching entities, including individuals, police departments, municipalities, and communications companies – cable television service providers, competitive telecommunications carriers (CLECs), and incumbent telecommunications carriers (ILECs). In particular, I participated directly in negotiations between Dominion and Verizon that resulted in the Joint Use Agreements.<sup>1</sup>

4. I reviewed allegations put forth in the Complaint. The purpose of this Declaration is: first, to explain the development of the annual pole rental rate framework set forth in the Joint Use Agreements, second, to explain Dominion's rate calculations under the Joint Use Agreements, as well as those that Dominion performs on an annual basis pursuant to Section 224(e); and third, to rebut Verizon's allegations that Dominion's rate calculations do not comport with federal law.

5. I also reviewed Dominion's Response, dated November 18, 2015, and can attest that the factual allegations made in the Response, its exhibits, and this Declaration are true and accurate to the best of my knowledge, information and belief.

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<sup>1</sup> General Joint-Use Agreement Between Verizon Virginia, Inc. and Virginia Electric and Power Company (Jan. 1, 2011) (appended to Complaint as Exhibit 1) and General Joint-Use Agreement Between Verizon South, Inc. and Virginia Electric and Power Company (Jan. 1, 2011) (appended to Complaint as Exhibit 2) (together, the "Joint Use Agreements").

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I. THE RATE FRAMEWORK IN THE JOINT USE AGREEMENTS.

6. Under the Joint Use Agreements, annual pole rental rates are determined based on:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>3</sup>

7. Although the parties never before relied on the FCC's principles as the foundation for negotiating joint use rates, doing so was not completely at odds with the parties' prior agreed upon rate methodologies. In fact, both the predecessor joint use agreement between Dominion and Verizon South, dating back to 1978,<sup>4</sup> and the most recent amendment to the joint use agreement between Dominion and Verizon Virginia, [REDACTED]

[REDACTED]. However, those agreements differed from the parties' present annual pole rental rate framework [REDACTED].<sup>5</sup>

8. The annual pole rental rates charged to Verizon South for 2006 through 2010 were established pursuant to the parties' 2002 settlement agreement,<sup>6</sup> and in fact were the only joint use

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<sup>2</sup> The "baseline" annual pole rental rate refers to the annual pole rental rates calculated for calendar year 2011, as set forth in Exhibit A to the Joint Use Agreements. The cost data used to calculate the baseline annual pole rental rates is set forth in Exhibits B and C to the Joint Use Agreements, and reflects the parties' 2009 FERC and ARMIS reports.

<sup>3</sup> At the time that the Joint Use Agreements were negotiated and executed, [REDACTED]

<sup>4</sup> See General Joint Use Agreement Between Virginia Electric and Power Company and Continental Telephone Company of Virginia (Jan. 1, 1978) (appended to Complaint as Exhibit 7).

<sup>5</sup> See Amendment to Joint Use Agreement Between Verizon Virginia Inc. and Virginia Electric and Power Company (Nov. 2, 2002) (appended to Complaint as Exhibit 6).

<sup>6</sup> See Settlement Agreement and Mutual Release between Verizon South, Inc. and Virginia Electric and Power Company (Dec. 31, 2002).

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rates implemented over the past 30 years of the parties' relationship that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>7</sup>

9. The formula applied to calculate the "space allocation" component under the Joint Use Agreements does not follow that prescribed in Section 224(e). Rather, as pole owning parties, Dominion and Verizon agreed [REDACTED]

[REDACTED].<sup>8</sup> In particular, the Joint Use Agreements [REDACTED]

[REDACTED].<sup>9</sup> [REDACTED]

[REDACTED].<sup>10</sup>

## II. DOMINION'S RATE CALCULATIONS.

10. For purposes of this analysis, it is important to distinguish between the annual pole rental rate that Dominion charges to Verizon pursuant to the Joint Use Agreements, and the annual attachment rate that Dominion charges to telecommunications carriers operating as pole licensees, under Section 224(e) of the Act. For the latter group of attachers, Dominion is obligated to charge an annual rate that does not exceed the rate yielded using the precise formula directed in the FCC's rules and orders. The FCC also provided specific guidance as to how this rate must be calculated based on certain pole data that Dominion includes in its annual reports to FERC.

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<sup>7</sup> Under the rate framework set forth in the Joint Use Agreements, as compared to the parties' predecessor agreements, [REDACTED]

<sup>8</sup> See Joint Use Agreements, Exhibit D.

<sup>9</sup> Joint Use Agreements, Exhibit D.

<sup>10</sup> *Id.*



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11. Verizon is not subject to the protections of Section 224(e), and therefore, the annual pole rental rates that Dominion charges to Verizon are not capped in the same manner as the annual pole attachment rates that Dominion charges to Verizon's competitors. Although the rates charged to Verizon must meet the "just and reasonable" standard of Section 224(b), I am not aware of any FCC rule or order that requires any particular rate formula (or formula inputs) as Verizon suggests. Based on my review of the Complaint, the Calnon Affidavit,<sup>11</sup> and the Tardiff Affidavit,<sup>12</sup> it seems that Verizon confuses the baseline 2011 annual pole rental rate calculated pursuant to the Joint Use Agreements, with the annual Telecom Rate that Dominion calculates pursuant to Section 224(e).

12. I am appending to this Declaration for reference a comparison of the annual pole rental rates charged pursuant to the Joint Use Agreements, the Telecom Rate and the pre-existing Telecom Rate calculated by Dominion, and the Telecom Rate calculated by Verizon.<sup>13</sup> Verizon is seeking to be charged a lower annual rental rate per pole than the rate that any of its competitors in Dominion's service area is charged for one single attachment. Moreover, in all cases, the annual rental rate that Verizon has proposed is less than the attachment rate charged to a cable television service provider under Section 224(d).<sup>14</sup>

13. The Complaint appears to dispute three specific rate elements: (1) the rate of return that Dominion uses to calculate its net pole cost under the Joint Use Agreements and for the purposes of calculating its Telecom Rate; (2) the allocation of pole space under the Joint Use Agreement; and (3) the "average number of attaching entities" element that uses to determine the space factor for purposes of calculating its Telecom Rate. I will address each in turn below.

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<sup>11</sup> Affidavit of Mark S. Calnon, Ph.D. (Jul. 31, 2015) (appended to Complaint as Exhibit A).

<sup>12</sup> Affidavit of Timothy J. Tardiff, Ph.D. (Aug. 3, 2015) (appended to Complaint as Exhibit D).

<sup>13</sup> Exhibit MCR-1.

<sup>14</sup>

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A. Net Pole Cost; Rate of Return Element.

14. For purposes of determining each party's baseline annual pole rental rate under the Joint Use Agreements, it was agreed [REDACTED]

[REDACTED]

[REDACTED].<sup>15</sup> Dominion and Verizon each acknowledged and agreed that the carrying charge rate formula ordered by the FCC for purposes of implementing Sections 224(d) and (e) is not similarly mandated for joint use rates. Nevertheless, the parties also agreed [REDACTED]

[REDACTED].

15. Dominion was at that time, and continues to operate pursuant to the FCC's order in *Cavalier Tel., LLC v. Virginia Electric and Power Co.*,<sup>16</sup> directing its use of specific data points to calculate its carrying charge rate.<sup>17</sup> Verizon, as most ILECs, calculates its carrying charge rate in accordance with the FCC's *Consolidated Order*.

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>19</sup> At the time that Dominion and Verizon executed the Joint Use Agreements, and through the present, Verizon applied [REDACTED]

[REDACTED]. I do not recall any discussion of whether an alternate rate of return

<sup>15</sup> See, e.g., *In the Matter of Commission's Rules and Policies Governing Pole Attachments* (CS Docket No. 97-98), *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996* (CS Docket No. 97-151), Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, FCC -1-170 (rel. May 25, 2001), *aff'd*, *Southern Co. Services, Inc. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002) ("*Consolidated Order*") Appendix E-2.

<sup>16</sup> *In the Matter of Cavalier Tel., LLC v. Virginia Electric and Power Company*, File No. PA 99-005, Order, DA 00-2119 (Sept. 18, 2000).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*



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ordered by the Virginia State Corporation Commission (“VSCC”) should instead be incorporated in the Joint Use Agreements, as it made perfect sense that the parties calculate annual pole rental rates using the same data found in their business records. [REDACTED]

[REDACTED]

[REDACTED]

17. For purposes of calculating rates under Sections 224 (d) and (e), Dominion applied

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>20</sup> [REDACTED]

[REDACTED]

**B. Space Allocation.**

18. As noted above, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The relative allocation of pole space prescribed in the Joint Use Agreements was negotiated based on the parties’ analysis of then-current pole data, and each party’s projected need for pole space going forward.

19. For purposes of measuring its own use of pole space, Dominion relied on existing business records listing all of its poles, and all of its facilities installed on those poles. On the basis

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<sup>20</sup> See *Application of Virginia Electric and Power Company for a 2013 Biennial Review of the Rates, Terms and Conditions for the Provision of Generation, Distribution and Transmission Services Pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2013-000202, Final Order (Nov. 26, 2013) 15.



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of that data, [REDACTED]  
[REDACTED]. In turn, Verizon represented  
to Dominion [REDACTED]  
[REDACTED]. Dominion was agreeable [REDACTED]  
[REDACTED]. Accounting for required NESC clearances between facilities,  
ground clearance, and setting depth, [REDACTED]  
[REDACTED].<sup>21</sup>  
[REDACTED]  
[REDACTED].<sup>22</sup>

20. In recent discussions, Dominion communicated to Verizon [REDACTED]  
[REDACTED]  
[REDACTED]. However, Verizon has  
not presented to Dominion any of its own data supporting its claim that a smaller space allocation  
is warranted.

21. For purposes of calculating pole attachment rates under Sections 224(d) and (e),  
Dominion applies the rate formulas prescribed in the FCC's rules and orders, including the FCC's  
presumption that one foot of pole space is occupied by each attachment.

**C. Average Number of Attaching Entities.**

22. For purposes of its Complaint, Verizon calculates its proposed Telecom Rate based  
on the FCC's presumption of five attaching entities per pole within the parties' urbanized shared

<sup>21</sup> [REDACTED]

<sup>22</sup> Joint Use Agreements, Exhibit D.

service area,<sup>23</sup> alleging that Dominion never rebutted that presumption.<sup>24</sup> I am surprised that both Mr. Calnon and Mr. Mills disclaim any knowledge of Dominion's survey establishing an average number of attaching entities of [REDACTED]<sup>25</sup> as this figure was certainly accepted as fact during recent discussions.<sup>26</sup> Moreover, I believe whatever doubt Verizon attempts to cast on the validity of this survey is resolved in the Declaration of William P. Zarakas appended to Dominion's Response.<sup>27</sup>

### III. VCTA REVIEW OF DOMINION'S RATES.

23. As a final matter, it is significant that Dominion's pole attachment rate calculations under Sections 224(d) and (e) [REDACTED]

[REDACTED]. In other words, [REDACTED]

[REDACTED]. Although Verizon demands rates that are competitively neutral as its view, Verizon proposes annual pole rental rates that are substantially lower than the attachment rates paid by its competitors.

\* \* \* \* \*

I declare under penalty of perjury under the laws of the United States that foregoing is true and correct to the best of my knowledge.

*Michael C. Roberts*

Michael C. Roberts

Dated: November 18, 2015

<sup>23</sup> Significantly, Verizon does not dispute that Dominion's service area is "urbanized", and therefore, the multiplier of .66 is required under 47 C.F.R. § 1.1409(e)(2)(i).

<sup>24</sup> Calnon Affidavit ¶¶ 23-24 (appended to Complaint as Exhibit A); Mills Affidavit ¶ 34 (appended to Complaint as Exhibit B).

<sup>25</sup> *Id.*

<sup>26</sup> See, e.g. email from Steve Mills to Mike Roberts (Oct. 8, 2014) (appended to Response as Exhibit 3).

<sup>27</sup> Declaration of William P. Zarakas (Nov. 18, 2015) (appended to Response as Exhibit C).

**EXHIBIT MCR-1**

REDACTED